



Federal Communications Commission
Washington, D.C. 20554

October 16, 2009

Nicholas A. Fraser
Office of Information and Regulatory Affairs
Office of Management and Budget
Washington, D.C. 20503

**RE: OMB Control No. 3060-0010, FCC Form 323 Ownership Report for
Commercial Broadcast Stations**

Dear Mr. Fraser,

This letter constitutes the follow-up to the October 6, 2009 letter memo by the Federal Communications Commission in response to the public comments submitted by various individuals and entities concerning proposed revisions to the information collection designated OMB Control No. 3060-0010, FCC Form 323 Ownership Report for Commercial Broadcast Stations. The Commission is submitting this follow-up response to address the comments it received concerning the Commission's requirement, set forth in the *323 Order*, that holders of certain non-attributable broadcast interests be reported biennially on Form 323.

**I. Response to Comments Concerning Collection of Non-Attributable Interest
Ownership Information**

A number of the commenters submitted comments criticizing the Commission's new requirement that holders of certain non-attributable broadcast interests be reported biennially on Form 323.¹ The *323 Order* expanded biennial reporting to include two categories of non-attributable interest holders: shareholders with a minority voting stock interest in corporations with a single majority shareholder that would be attributable but for the single majority shareholder exemption and interests that would be attributable but for an exemption accorded to certain investments in eligible entities.² The extension of the reporting obligation includes the obligation to report that person's FCC Registration Number (FRN) on Form 323.³

ABC et al. argues that the expansion of the reporting obligations will be "particularly burdensome on publicly traded companies, which have no ability to compel reportable shareholders to provide them with the information requested by the FCC."⁴ Wiley likewise argues that the burdens on compliance would be heavy, describing a multi-step process for

¹ See, e.g., ABC et al. Comments at 6-7; Wiley Comments at 5, 10-11; NAB Reply to Opposition at 4-9. The Commission will refer to the comments and commenters by the same names as set forth in the previous response memo.

² *In re Promoting Diversification of Ownership in the Broadcasting Services*, Report and Order and Fourth Further Notice of Proposed Rulemaking (the "323 Order"), MB Docket Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244, 04-228; FCC 09-33; 24 FCC Rcd 5896 (2009).

³ The Commission previously responded to criticism concerning the FRN requirement in its memo response dated October 6, 2009.

⁴ ABC et al. Comments at 6.

attorneys to contact and guide interest holders through the process of supplying information required by Form 323, including the FRN.⁵ NAB argues that collection of information on these types of non-attributable interests is burdensome because “It would be highly unusual for attorneys or banks representing any type of company to request or maintain information on the race, ethnicity or gender of all of the individuals who are part of the chain of investment in that company” and respondents will have a difficult time obtaining information they do not ordinarily collect.⁶ NAB further argues that the reporting obligation will discourage investment in broadcast companies.⁷

On October 16, 2009, the Commission adopted a *Memorandum Opinion and Order* in response to a Petition for Reconsideration filed by the National Association of Broadcasters.⁸ The *Memorandum Opinion and Order* eliminates the requirement that certain non-attributable interests (voting stock interests that would be attributable but for the operation of the single majority shareholder attribution exemption and equity and/or debt interests that would be attributable but for the exemption for certain investments in eligible entities) be reported on biennially-filed Form 323s. The Commission agreed that it was advisable to invite additional comment from the public on requiring reporting of these non-attributable interests and issued a *Fifth Further Notice of Proposed Rulemaking* inviting such further comment. The *Fifth Further Notice* requests comment on the Commission’s proposal to require reporting of these non-attributable interests and asks whether imposing the requirement would discourage potential investment in the broadcasting industry or otherwise impose burdens that outweigh the benefits of collecting the information.

Accordingly, the revised Form 323 submitted herewith eliminates the requirement to report these non-attributable interests. The revised Form will lessen the burden on respondents filing Form 323, particularly for entities with complex ownership structures. Nevertheless, in light of the comments the Commission received arguing that the previous burden calculations underestimated the time required to complete Form 323, the Commission has decided to err on the side of caution and leave as-is the increased revised burden hour calculations set forth in the previous memo response. The Commission believes that the average range of hours to complete the form remains an accurate estimate of the average hours respondents will spend completing the form, notwithstanding the significant lightening of the burdens on certain owners with complex corporate structures or that have significant stockholders in a single-majority shareholder structure. If the Commission decides at the conclusion of the rulemaking cycle initiated by the *Fifth Further Notice of Proposed Rulemaking* to re-adopt the reporting obligations adopted in the *323 Order*, the Commission will re-evaluate the burden calculations and make a decision whether the proposed burden hours need to be increased further to account for reporting of the non-attributable ownership interests described above.

⁵ Wiley Comments at 10-11.

⁶ NAB Reply to Opposition at 5.

⁷ NAB Reply to Opposition at 6-7.

⁸ *In re Promoting Diversification of Ownership in the Broadcasting Services*, Memorandum Opinion and Order and Fifth Further Notice of Proposed Rulemaking, MB Docket Nos. 07-294, 06-121, 02-277, 01-235, 01-317, 00-244, 04-228; FCC 09-92 (rel. Oct. 16, 2009).

In its previous response letter dated October 6, 2009, the Commission noted that it would address NAB's comments suggesting that if the Commission affirmed its decision to collect information on non-attributable ownership interests, that reporting be limited to race, gender, and ownership percentage of the non-attributable investors, rather than full reporting of their names, addresses, familial relationships, and other media holdings.⁹ Because the Commission reversed its earlier decision to collect information on non-attributable ownership interests, NAB's request for limits on the data collected is now moot.

II. Request for Approval of Revised Information Collection

As stated in its previous memo response of October 6th, the Commission has attempted to address the comments that it has received concerning its proposed revisions to FCC Form 323, but disagrees with commenters arguing that the form should be disapproved. In addition, the Commission has now take direct action to eliminate some of the anticipated new burdens on respondents in response in part to the feedback it received on the original proposed changes to Form 323. The Commission will now have the opportunity to solicit additional comment from the public on the effects and burdens of the non-attributable ownership reporting requirement before deciding whether to re-adopt those provisions. Accordingly, we renew our request for approval of the proposed revisions to Form 323, which the Commission believes will correct serious shortcomings in the existing form and will greatly improve the ability of the Commission to gather data necessary for future review of its diversity and ownership initiatives.

FEDERAL COMMUNICATIONS COMMISSION


Walter Boswell
Acting Assoc. Managing Director, PERM

⁹ NAB Comments at 18.